CERTIFICATE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted] 28

WESTERN FUEL COMPANY

vs.

ANTONE GARCIA, AS ADMINISTRATOR OF THE ESTATE OF MANUEL SOUZA, DECEASED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED JANUARY 26, 1920.

(27,444)

(27,444)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 689.

WESTERN FUEL COMPANY

vs.

ANTONE GARCIA, AS ADMINISTRATOR OF THE ESTATE OF MANUEL SOUZA, DECEASED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 7, 1920.

1 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3195.

WESTERN FUEL COMPANY (a Corporation), Appellant,

vs.

ANTONE GARCIA, as Administrator of the Estate of Manuel Souza, Deceased, Appellee.

Upon Appeal from the United States District Court, Northern District of California, Southern Division.

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit, Certifying Certain Questions or Propositions of Law to the Supreme Court of the United States under Section 239, Judicial Code.

Before Gilbert, Ross, and Hunt, Circuit Judges.

This cause came to the Circuit Court of Appeals for the Ninth Circuit upon an appeal from the United States District Court
2 for the Northern District of California, Southern Division, from a judgment in favor of the appellee, as libelant in that court, against the appellant, as libelee in that court, for the sum of $10,000. The cause was a libel in admiralty for damages for wrongful death.

Manuel Souza, a citizen and resident of California, was killed while in the employment of Western Fuel Company, a corporation of California, working in the hold of the Steamship "Tanered," which was unloading at the bunkers of Western Fuel Company, in Oakland, California. This occurred on August 5, 1916. The deceased employee left him surviving a widow and five minor children.

On August 24, 1916, the widow of Manuel Souza made an application for adjustment of a claim presented by her against the Western Fuel Company to the Industrial Accident Commission of the State of California under the Workmens' Compensation Insurance and Safety Act of California, (Chapter 176, Laws of 1913, Stats. 1913, page 279). The State Industrial Accident Commission made an award favorable to the widow. The matter was taken to the Supreme Court of California for review, and on August 6, 1917, the award made by the State Industrial Accident Commission was annulled as having been made without jurisdiction, in view of the decision of the Supreme Court of the United States in the case of Southern Pacific Company vs. Marie Jensen, 244 U. S. 205.

Thereafter, to wit, on August 21, 1917, this cause was initiated by the filing of a libel for damages for wrongful death in the District

Court of the United States for the Northern District of California, Southern Division.

In this cause the appellee relies upon the provisions of the
3 statutes of the State of California giving a right of action for wrongful death and modifying in very substantial particulars the common law defenses of assumption of risk, negligence of a fellow servant and contributory negligence in cases where the relationship of employer and employee is involved. (Section 377, Code of Civil Procedure and Section 1970 of the Civil Code of California.)

The District Court, rendering its decree, applied the law as expressed in the California Code provisions above cited, having reference also to a state statute known as the "Roseberry Act" of 1911. (Chapter 399 of the laws of 1911; stats. 1911, page 796), Section 1 of which abolishes the doctrine of assumption of risk and the defense of negligence of a fellow servant, and found, to which this Court agrees, that the death of Souza was caused by the negligence of a fellow servant and held that the Roseberry Act of 1911 warrants recovery by the appellee herein because it does away with the doctrine of assumption of risk and the defense that the accident was caused by the negligence of a fellow servant.

Questions of law concerning which the Circuit Court of Appeals of the Ninth Circuit desires the instruction of the Supreme Court are:

1. Are the statutes of the State of California, conferring the right of action for wrongful death, to be applied in libels in admiralty for wrongful death?

2. If the state statutes do apply, are they to be applied with all their incidents abolishing or modifying the common law defenses of assumption of risk, contributory negligence and the negligence of a fellow servant, or

3. Does the state statute merely give the right of action and
, leave for application the rules of maritime law covering per-
4 sonal injuries, thus doing away with any distinction heretofore recognized between actions for personal injuries not resulting in death and actions for wrongful death sanctioned by state statutes.

(Signed) WM. B. GILBERT,
(Signed) ERSKINE M. ROSS,
(Signed) WM. H. HUNT,
Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated San Francisco, Cal., October 30th, 1919.

(Endorsed:) No. 3195. U. S. Circuit Court of Appeals for the Ninth Circuit. Western Fuel Company, a Corporation, Appellant, vs. Antone Garcia, as Administrator of the estate of Manuel Souza, deceased, Appellee. Certificate of the United States Circuit Court of Appeals for the Ninth Circuit, certifying certain questions or propositions of law to the Supreme Court of the United States under

COPY BOUND CL

section 239, Judicial Code. Filed Oct. 30, 1919. F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

5 United States Circuit Court of Appeals for the Ninth Circuit.

No. 3195.

WESTERN FUEL COMPANY, a Corporation, Appellant,
vs.
ANTONE GARCIA, as Administrator of the Estate of Manuel Souza, Deceased, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals for the Ninth Circuit to Copy of Certificate of said Court Certifying Certain Questions or Propositions of Law to the Supreme Court of the United States.

I, Frank D. Monckton, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing four (4) pages, numbered from and including 1 to and including 4, to be a full, true and correct copy of the Certificate of the United States Circuit Court of Appeals for the Ninth Circuit, Certifying Certain Questions of Propositions of Law to the Supreme Court of the United States Under Section 239 of the Judicial Code, filed in the above-entitled cause on the thirtieth day of October, A. D. 1919, as the original thereof remains on file and appears of record in my office.

Attest my hand and the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this thirtieth day of October, A. D. 1919.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk.
By PAUL P. O'BRIEN,
Detputy Clerk.

[Endorsed:] No. 3195. United States Circuit Court of Appeals for the Ninth Circuit. Western Fuel Company, a Corporation, Appellant, vs. Antone Garcia, as administrator of the estate of Manuel Souza, deceased, appellee. Certified copy certificate of United States Circuit Court of Appeals for the Ninth Circuit, certifying certain questions or propositions of law to the Supreme Court of the United States under section 239, Judicial Code.

Endorsed on cover: File No. 27,444. U. S. Circuit Court of Appeals, 9th Circuit. Term No. 689. Western Fuel Company vs. Antone Garcia, as administrator of the estate of Manuel Souza, deceased. (Certificate.) Filed January 26th, 1920. File No. 27,444. File No. 27,444.

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